

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #16	CCRB Case #: 201706000	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/01/2017 10:30 PM	Location of Incident: Southern Avenue and Barretto Street; Bruckner Boulevard and Hunts Point Avenue; 41st Precinct	Precinct: 41	18 Mo. SOL 8/1/2018	EO SOL 8/1/2018	
Date/Time CV Reported Mon, 07/17/2017 6:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/24/2017 2:46 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kenny Maldonado	12408	942108	041 PCT
2. POF Gabrielle Rodriguez	13688	955396	041 PCT
3. Officers			
4. SGT Dany Fana	00733	944547	041 PCT
5. POM Eric Smith	25541	948277	041 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ahsan Zafar	03773	949822	041 PCT
2. SGT Justin Marzan	4343	949275	041 PCT
3. POM Naser Dzaferovic	21223	959423	041 PCT
4. POM Erickson Ramirez	03969	954260	041 PCT
5. POF Edili Ramirez	15171	962041	041 PCT
6. POM Anthony Rivera	09792	962057	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Dany Fana	Abuse: On Southern Avenue and Barretto Street, in the Bronx, Sergeant Dany Fana stopped the vehicle in which § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants.	
B.SGT Dany Fana	Abuse: On Southern Avenue and Barretto Street, in the Bronx, Sergeant Dany Fana frisked § 87(2)(b) § 87(2)(b)	
C.POM Eric Smith	Abuse: On Southern Avenue and Barretto Street, in the Bronx, Police Officer Eric Smith frisked § 87(2)(b)	
D.POM Eric Smith	Abuse: On Southern Avenue and Barretto Street, in the Bronx, Police Officer Eric Smith frisked § 87(2)(b)	
E.POF Gabrielle Rodriguez	Abuse: On Southern Avenue and Barretto Street, in the Bronx, Police Officer Gabrielle Rodriguez frisked § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
F.POF Gabrielle Rodriguez	Abuse: On Southern Avenue and Barretto Street, in the Bronx, Police Officer Gabrielle Rodriguez searched § 87(2)(b) [REDACTED]	[REDACTED]
G.POM Eric Smith	Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Eric Smith used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
H.POF Gabrielle Rodriguez	Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Gabrielle Rodriguez used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
I.POM Kenny Maldonado	Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Kenny Maldonado used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
J.POM Kenny Maldonado	Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Kenny Maldonado used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
K. Officers	Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, officers used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
L.POM Eric Smith	Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Eric Smith used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
M.POM Eric Smith	Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Eric Smith used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
N.POM Kenny Maldonado	Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Kenny Maldonado used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
O.POF Gabrielle Rodriguez	Abuse: On Southern Avenue and Barretto Street, Police Officer Gabrielle Rodriguez searched the vehicle in which § 87(2)(b) [REDACTED], § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were occupants.	[REDACTED]
P. Officers	Force: At the 41st Precinct stationhouse, officers used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
Q. Officers	Force: At the 41st Precinct stationhouse, officers restricted § 87(2)(b) [REDACTED]'s breathing.	[REDACTED]

Case Summary

On July 17, 2017, § 87(2)(b) filed this complaint with IAB on behalf of her husband, § 87(2)(b). § 87(2)(b) did not witness the incident. On August 28, 2017, the case was closed pending litigation and on October 13, 2017, the CCRB reopened the case on the request of § 87(2)(b). § 87(2)(b) was interviewed at the CCRB on November 2, 2017.

On February 1, 2017, at approximately 10:30 p.m., Sgt. Dany Fana stopped a vehicle occupied by § 87(2)(b) and § 87(2)(b) on Southern Avenue and Barretto Street in the Bronx (**Allegation A: Abuse of Authority**, § 87(2)(g)). All three occupants were removed from the vehicle. Sgt. Fana frisked § 87(2)(b), § 87(2)(b) and PO Eric Smith frisked § 87(2)(b) and § 87(2)(b) (**Allegation B: Abuse of Authority**, § 87(2)(g)). **Allegation C: Abuse of Authority**, § 87(2)(g). **Allegation D: Abuse of Authority**, § 87(2)(g). PO Rodriguez also frisked and searched § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g)). **Allegation F: Abuse of Authority**, § 87(2)(g).

After being searched, § 87(2)(b) ran from the officers and PO Rodriguez and PO Smith caught up to him on a city bus located on Hunts Point Avenue and Bruckner Boulevard. Inside the bus, PO Smith allegedly brought § 87(2)(b) down to the ground and allegedly punched § 87(2)(b)'s face and body five or six times while § 87(2)(b) was lying on the ground (**Allegation G: Force**, § 87(2)(g)). PO Rodriguez allegedly squeezed § 87(2)(b) by his handcuffs and pulled him upwards by the handcuffs (**Allegation H: Force**, § 87(2)(g)). One of the responding officers, PO Kenny Maldonado punched § 87(2)(b)'s face twice while he was still on the ground (**Allegation I: Force**, § 87(2)(g)). PO Maldonado subsequently pulled § 87(2)(b) off of the bus and dropped § 87(2)(b) face first on the ground (**Allegation J: Force**, § 87(2)(g)). While on the ground, officers kicked § 87(2)(b) and PO Smith punched § 87(2)(b) three or four times (**Allegation K: Force, Officers Unidentified**; **Allegation L: Force**, § 87(2)(f)). § 87(2)(b) was brought inside a police vehicle and PO Smith allegedly punched § 87(2)(b) several times while at the back of the police vehicle (**Allegation M: Force**, § 87(2)(g)). While in the police vehicle, PO Maldonado pulled the front of § 87(2)(b)'s shirt over his face and walked away (**Allegation N: Force**, § 87(2)(g)).

PO Rodriguez returned to Southern Avenue and Barretto Street and retrieved the knives from the vehicle (**Allegation O: Abuse of Authority**, § 87(2)(g)). § 87(2)(b), § 87(2)(b) and § 87(2)(b) were arrested and charged with criminal possession of a weapon.

At the 41st Precinct stationhouse, officers allegedly pushed § 87(2)(b) to the ground and then pulled the hood of § 87(2)(b)'s sweater over his face restricting his breathing (**Allegation P: Force**, § 87(2)(g)). **Allegation Q: Force**, § 87(2)(g). From the stationhouse, § 87(2)(b) was transported to the hospital to treat his injuries.

There is no video footage depicting these incidents.

Findings and Recommendations

Allegation (A) Abuse of Authority: On Southern Avenue and Barretto Street, in the Bronx, Sergeant Dany Fana stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

During his CCRB statement, § 87(2)(b) voluntarily admitted that he was high from smoking weed and was also drunk during the incident (Board Review 01). However, § 87(2)(b) denied smoking weed or drinking alcohol inside the vehicle. § 87(2)(b) was sitting in the rear passenger seat on the passenger side, while § 87(2)(b) § 87(2)(b) was in the driver seat and § 87(2)(b) was in the front passenger seat. § 87(2)(b) stated that § 87(2)(b) § 87(2)(b)'s vehicle did not have tinted windows and he was not aware if the driver had violated any VTL law or if the vehicle was in violation of these laws. After § 87(2)(b) noticed the police lights turned on from an unmarked vehicle behind their vehicle, § 87(2)(b) stopped the vehicle and Sgt. Dana, PO Rodriguez, and PO Smith approached. Upon the officers approaching, § 87(2)(b) heard Sgt. Dana tell § 87(2)(b) that that their vehicle's right taillight was out.

§ 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) did not provide a statement to the CCRB (Board Review 39).

Sgt. Fana was the driver of the police vehicle at the time of incident. From the officers' testimonies, it is unclear where PO Rodriguez and PO Smith were seated inside the vehicle, but they were both in the vehicle with Sgt. Fana during the vehicle stop. During his CCRB statement, Sgt. Fana stated that he observed a vehicle with a defective rear brake light (Board Review 06). Sgt. Fana stated either PO Smith or PO Rodriguez also informed him that they observed the defective brake light. Sgt. Fana subsequently stopped the vehicle for the traffic infraction. Sgt. Fana did not recall if he observed any additional violations and stated that he did not observe anything else going on regarding this vehicle. PO Rodriguez's statement was generally consistent with Sgt. Fana's account regarding the reason as to why the vehicle was stopped (Board Review 13). PO Rodriguez affirmed that she observed the defective taillight as well. In his CCRB statement, PO Smith stated that he initially did not know why the vehicle was being stopped, but he was later informed by Sgt. Fana that the vehicle was stopped for a traffic violation (Board Review 05). PO Smith stated that he also observed the violation after being informed of it, but PO Smith did not recall the specific violation. PO Smith stated that aside from the traffic violation, PO Smith did not observe any additional reasons that the vehicle could have been stopped over for. § 87(2)(b)'s vehicle was not cited for any VTL violations.

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Allegation (D) Abuse of Authority: On Southern Avenue and Barretto Street, in the Bronx, Police Officer Eric Smith frisked § 87(2)(b)

Allegation (E) Abuse of Authority: On Southern Avenue and Barretto Street, in the Bronx, Police Officer Gabrielle Rodriguez frisked § 87(2)(b)

Allegation (F) Abuse of Authority: On Southern Avenue and Barretto Street, in the Bronx, Police Officer Gabrielle Rodriguez searched § 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) were all frisked immediately after they were removed from the vehicle during the stop. It is also undisputed that PO Rodriguez frisked and searched § 87(2)(b) after PO Smith frisked § 87(2)(b).

In his CCRB statement, § 87(2)(b) stated that after Sgt. Fana informed § 87(2)(b) of the defective taillight, Sgt. Fana instructed § 87(2)(b) to exit the vehicle and Sgt. Fana subsequently patted down § 87(2)(b)'s outer clothing from his arms down to his legs (Board Review 01). § 87(2)(b) also heard PO Smith tell § 87(2)(b) to step out of the vehicle and § 87(2)(b) complied. PO Smith patted § 87(2)(b)'s outer clothing in the same aforementioned manner. § 87(2)(b) and § 87(2)(b) were both taken to the rear of the vehicle. PO Smith instructed § 87(2)(b) to step out of the vehicle once and § 87(2)(b) complied. Outside the vehicle, PO Smith patted down § 87(2)(b)'s outer clothing from his arms down to his legs. § 87(2)(b) was also instructed to go to the rear of the vehicle. § 87(2)(b) complied and stood at the rear with § 87(2)(b), § 87(2)(b), and § 87(2)(b). At the rear of the vehicle, PO Rodriguez patted § 87(2)(b)'s front right pant pocket. During the CCRB interview, § 87(2)(b) volunteered that he had "some drugs" and marijuana in that pocket. § 87(2)(b) denied having anything else in that pocket. After PO Rodriguez patted § 87(2)(b)'s front right pocket, she placed her hand inside the same pocket and removed the drug and weed. PO Rodriguez subsequently told § 87(2)(b) to turn around and in response, § 87(2)(b) ran.

§ 87(2)(b), § 87(2)(b), § 87(2)(b), and § 87(2)(b) did not provide a statement to the CCRB (Board Review 39).

PO Smith and PO Rodriguez provided consistent accounts regarding the frisks of § 87(2)(b) and § 87(2)(b). However, Sgt. Fana's account of the frisks was inconsistent with the two officers' accounts. Furthermore, all of the officers acknowledged that none of the occupants were determined to be under arrest when they were frisked.

In his CCRB testimony, Sgt. Fana stated that upon approaching the vehicle, he asked § 87(2)(b) for his license and registration and § 87(2)(b) provided his license (Board Review 06). At some point, either PO Smith or PO Rodriguez alerted Sgt. Fana that there were knives inside the vehicle. Sgt. Fana stated that the officer looked over the roof of the vehicle, pointed down with their finger, and mouthed the word "knives." Sgt. Fana affirmed during his CCRB interview that he could not see the knives at this point because of where he was standing. Sgt. Fana subsequently asked § 87(2)(b) to step out of the vehicle for his safety because of the time of night and the observation of the knife in plain view. § 87(2)(b) complied with Sgt. Fana's instruction. Once § 87(2)(b) stepped out of the vehicle, Sgt. Fana was able to observe two knives in the center console by the cup holder in between the driver and passenger seat. Sgt. Fana stated that the knives appeared to be a gravity knife or a folding knife.

from the outside because of his experience in making numerous arrest regarding gravity knives in the past, but he could not describe the knives and there was nothing specific about the knives that made it appear that they were gravity knives. Sgt. Fana denied observing any bulges on § 87(2)(b). Once § 87(2)(b) exited the vehicle, § 87(2)(b) stepped to the rear of the vehicle. Simultaneously, § 87(2)(b) also exited the vehicle and walked to the rear. Sgt. Fana denied observing any bulges on § 87(2)(b). Sgt. Fana did not have a view of § 87(2)(b) but once § 87(2)(b) exited the vehicle, he saw § 87(2)(b) immediately run. After § 87(2)(b) ran, PO Smith and PO Rodriguez chased § 87(2)(b). PO Smith returned to Sgt. Fana to handcuff § 87(2)(b) and then continued to chase § 87(2)(b) while Sgt. Fana handcuffed § 87(2)(b) for Sgt. Fana's safety. Sgt. Fana stated § 87(2)(b) and § 87(2)(b) were not considered to be under arrest at this point. After § 87(2)(b) was placed in handcuffs, Sgt. Fana frisked § 87(2)(b) to ensure that there were no additional weapons that could hurt him and the frisk yielded negative results for weapons. Sgt. Fana stated that he thought that § 87(2)(b) might have had a weapon because of the observation of the gravity knife inside the vehicle and because § 87(2)(b) ran away.

In their CCRB statement, PO Smith and PO Rodriguez both observed two knives inside a cup in the cup holder by the center console between the driver seat and passenger seat (Board Review 05 and 13). PO Smith and PO Rodriguez signaled to one another to alert each other of the knives in the vehicle. PO Smith stated that he was able to see approximately two inches of the knives and PO Rodriguez stated that she saw approximately five or six inches of the knives. PO Smith stated that he determined the two objects to be knives because of their shape and from his past experiences dealing with switchblades, gravity knives, and folding knives. PO Smith stated that he has more experience with gravity knives so he assumed that the two knives were gravity knives, but knew that they were sharp cutting instruments. PO Rodriguez stated that she was not certain if the two knives were switchblades or gravity knives when she first observed the knives, but she identified the two objects as knives from her experience with gravity knives and switchblades. PO Smith and PO Rodriguez both observed Sgt. Fana frisk § 87(2)(b) after § 87(2)(b) immediately exited the vehicle. PO Smith and PO Rodriguez stated that the frisk of § 87(2)(b) yielded negative results.

PO Smith stated that when he initially approached the vehicle, he observed § 87(2)(b) putting his hands in his coat pockets, adjusting his waistband, and turning his body 45 degrees so that his back was facing towards the officers (Board Review 05). PO Rodriguez further stated that § 87(2)(b) was repeatedly placing his hand inside of his right coat pocket and she repeatedly informed him to keep his hands out of his pockets (Board Review 13). PO Smith also stated told § 87(2)(b) to keep his hands out of his pocket approximately three or four times. PO Rodriguez and PO Smith both stated that § 87(2)(b) continued to put his in his pockets. PO Rodriguez and PO Smith denied observing any bulge, and PO Smith added that § 87(2)(b) was wearing a thick jacket.

PO Smith denied seeing any movement from the front two occupants of the vehicle and he added that they were calm and compliant. PO Smith asked § 87(2)(b) to step out of the vehicle to check him for weapons because of his observation of the two knives in the vehicle. PO Smith denied seeing any bulges on § 87(2)(b). PO Smith frisked § 87(2)(b)'s pockets and waistband and the frisk yielded negative results for any weapons. PO Smith asked § 87(2)(b)

to step out of the vehicle and § 87(2)(b) immediately complied. PO Smith denied seeing any bulges on § 87(2)(b) after he stepped out of the vehicle. PO Smith subsequently frisked § 87(2)(b)'s pockets and waistband for weapons and the frisk yielded negative results for weapons. PO Smith stated that he did not feel any object objects in § 87(2)(b)'s pockets. As PO Smith was frisking § 87(2)(b) acted nervously. PO Smith also stated that § 87(2)(b) turned away as he went to frisk § 87(2)(b)'s left pocket by his waistband. PO Smith asked § 87(2)(b) to re-position himself, but § 87(2)(b) continued to turn away approximately two or three times. Eventually, PO Smith successfully felt § 87(2)(b)'s waistband and he did not feel any objects inside that pocket. PO Smith stated that as § 87(2)(b) walked to the rear of the vehicle, PO Rodriguez observed a white rock-like substance wrapped in a plastic bag hanging out of § 87(2)(b)'s pocket. PO Rodriguez asked § 87(2)(b) what the object was and pulled the object out of the pocket. PO Smith stated that he did not see the object that was sticking out because § 87(2)(b)'s back was facing him. PO Smith saw the object after it fell on the ground. PO Smith stated that the object was approximately five inches in width and four inches in length and shaped like a bar of soap which he identified as possibly crack or "coke."

In her CCRB testimony, PO Rodriguez stated that while she was at the vehicle, she immediately smelled an odor of un-burnt marijuana and also observed an opened bottle of alcohol in the back seat. PO Rodriguez observed PO Smith frisk § 87(2)(b) and § 87(2)(b) and the frisks yielded negative results. When PO Rodriguez told § 87(2)(b) to step to the rear of the vehicle, § 87(2)(b) placed his hand inside his front right coat pocket. PO Rodriguez told § 87(2)(b) to stop going into his pocket and in response § 87(2)(b) momentarily stopped doing so, but he would place his hand inside the same pocket again. PO Rodriguez stated that § 87(2)(b) placed his hand inside the pocket twice while he was at the rear of the vehicle. PO Rodriguez stated that § 87(2)(b) was wearing a big coat at the time so she did not see any bulges from the front right coat pocket. After § 87(2)(b) placed his hand inside his front right coat pocket twice, PO Rodriguez frisked only § 87(2)(b)'s front right coat pocket by touching it. PO Rodriguez stated that she was concerned that there might have been a weapon in that pocket because there were two weapons inside the vehicle and § 87(2)(b) did not comply with her instructions to not place his hands inside the pocket. PO Rodriguez stated that she felt a hard round object, but she could not further describe what the object felt like. PO Rodriguez stated that she thought it might have been a gun or a knife. After frisking the pocket, PO Rodriguez subsequently placed her hand inside this pocket and removed an object which turned out to be a "rock" of crack or cocaine. PO Rodriguez described the object as being round, white, and the size of a golf ball. PO Rodriguez stated that at some point she also found a bag of marijuana on § 87(2)(b) but she did not recall when she discovered this and specifically whether she found this during the initial vehicle stop or afterwards.

The property vouchers also indicated that two switchblade knives, marijuana, and a substance alleged to be crack cocaine were recovered (Board Review 35).

§ 87(2)(b)

§ 87(2)(b)

According to the § 87(2)(b) and § 87(2)(b)'s arrest report, they were all charged with criminal possession of a weapon and PO Rodriguez noted that she observed two switchblades inside the vehicle (Board Review 32-34).

An officer could order the passengers out of a vehicle during a traffic stop, but in order to frisk a person, an officer must have reasonable suspicion that the person is armed and dangerous, Arizona v. Johnson 555 U.S. 323 (2009) (Board Review 22).

The odor of marijuana emanating from a vehicle establishes probable cause to search the vehicle and its occupants, People v. Smith 66 A.D.3d 514 (2009) (Board Review 25).

It is well established that an officer may frisk an individual if he reasonably suspects that the individual possess a weapon, People v. Debour 40 N.Y.2d 210 (1976) (Board Review 04). When a visual observation or a limited protective frisk of a subject reveals a bulge, that bulge must look or feel like a weapon before the officer is entitled to subject the individual to a further, more intrusive search, People v. Clark 213 A.D.2d 946 (1995) (Board Review 26).

An officer may frisk an individual to preserve their safety when an individual repeatedly refuses the officer's instructions stop reaching for their pockets, People v. § 87(2)(b) 278 A.D.2d 808 (2000) (Board Review 24).

Officers are entitled to take precautionary measures upon failing to reveal that an individual is armed during a frisk by frisking them a second time after a gun was found from another individual in the same vehicle, In re Jay B 240 A.D.2d 488 (1997) (Board Review 21).

It is undisputed that all of the civilians were immediately frisked after being removed from the

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[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation (G) Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Eric Smith used physical force against § 87(2)(b)

Allegation (H) Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Gabrielle Rodriguez used physical force against § 87(2)(b)

The force PO Smith and PO Rodriguez allegedly used against § 87(2)(b) on the city bus are in dispute. During his CCRB testimony, § 87(2)(b) identified the officers who chased him onto the bus as a female officer and a male officer name Kenny Maldonado. § 87(2)(b) stated that he obtained the male subject officer's name from the paperwork he received from his

§ 87(2)(b). § 87(2)(g)

[REDACTED]

In his CCRB statement, § 87(2)(b) stated that as he was at the rear of the city bus when PO Smith and PO Rodriguez told him to put his hands up and get on the ground (Board Review 01). § 87(2)(b) lied flat on his stomach on the ground with his arms above his head. An unidentified officer subsequently grabbed § 87(2)(b)'s left arm and brought it towards his back. § 87(2)(b) denied moving body as the officer was doing this. § 87(2)(b)'s other arm was also brought to his back and he was placed in handcuffs. § 87(2)(b) denied doing anything physically as he was being placed in handcuffs. While § 87(2)(b) was rear handcuffed and still lying on the ground, PO Smith punched § 87(2)(b)'s face and mouth approximately five or six times in succession. § 87(2)(b) stated that eight gold teeth and three of his natural teeth fell out as a result of the punches. § 87(2)(b) stated that PO Smith also punched the right side of his ribs four or five times. § 87(2)(b) heard the officers telling him to stop resisting. § 87(2)(b) denied resisting and stated that he was not doing anything as he was being hit. As PO Smith was punching § 87(2)(b) PO Rodriguez was on top of § 87(2)(b) squeezing his handcuffs, and pulling his arms up. PO Rodriguez grabbed § 87(2)(b) by the handcuffs and pulled his arms straight up as he was still on the ground. § 87(2)(b) stated that his natural teeth along with his gold teeth were knocked out during this incident.

During his CCRB interview, § 87(2)(b) provided three photos which depict a laceration to the bridge of his nose, missing front teeth, and what appear to be blood stains on the hood of his hoodie and the front of his white tee shirt (Board Review 29). § 87(2)(b)'s former criminal attorney § 87(2)(b), confirmed that the three photos were taken during § 87(2)(b)'s § 87(2)(b). Additionally, § 87(2)(b) provided a photo that was taken in 2015 that shows his gold teeth which he alleged were knocked out during this incident (Board Review 45). Furthermore, during his CCRB interview, a photo was taken of § 87(2)(b)'s oral condition depicting his missing front teeth (Board Review 02).

Despite speaking with four out of the six possible bus operators who may have witnessed the incident, the investigation was unable to identify the bus operator of the bus § 87(2)(b) was on (Board Review 39).

In their CCRB testimony, PO Smith and PO Rodriguez stated that they were the initial officers to board the city bus after § 87(2)(b) (Board Review 05 and 13). PO Smith stated that while onboard the city bus he immediately grabbed § 87(2)(b)'s arms and pulled him to the ground by his arms to prevent a fight. § 87(2)(b) resisted by trying to pull away. PO Smith used his strength to overcome his resistance by pulling § 87(2)(b) to the floor. § 87(2)(b) was positioned faced-down on the ground. PO Smith placed one handcuff on one arm and then placed the other handcuff on his other arm. PO Smith denied doing anything else besides pulling § 87(2)(b) down and handcuffing him. PO Smith denied hitting, kicking, or slamming § 87(2)(b). PO Smith stated that there were no difficulties in placing him in handcuffs. PO Smith stated that PO Rodriguez did not assist with placing § 87(2)(b) on the floor or placing him in handcuffs. After § 87(2)(b) was placed in handcuffs, § 87(2)(b) was moving like a “fish” by wiggling his upper body and not staying still. PO Smith stated that § 87(2)(b) was also flailing his legs by kicking up and down and side to side. PO Smith did not see if the kicks were directed towards any officers. PO Smith denied making any physical contact with § 87(2)(b).

§ 87(2)(b)'s face. PO Smith denied seeing PO Rodriguez pull § 87(2)(b) by his handcuffs. PO Smith denied seeing any officers using any physical force against § 87(2)(b).

§ 87(2)(g)

PO Rodriguez stated that she saw an officer, who she did not recall, attempt to handcuff § 87(2)(b). Moreover, she did not know if PO Smith also attempted to handcuff § 87(2)(b). PO Rodriguez stated that § 87(2)(b) was flailing his arms by moving them away and kicking his feet while on the floor. PO Rodriguez did not recall if she made any physical contact with § 87(2)(b). PO Rodriguez denied seeing any officers punch or kick § 87(2)(b). PO Rodriguez denied punching or kicking § 87(2)(b). PO Rodriguez also denied pulling § 87(2)(b) up by his handcuffs. PO Rodriguez denied seeing any injuries on § 87(2)(b) and did not see § 87(2)(b) bleeding. PO Rodriguez recalled PO Maldonado arriving on the scene at some point and recalled him saying, "I got him." PO Rodriguez subsequently exited the bus because she was exhausted and she did not see what occurred after PO Maldonado arrived. PO Rodriguez stated that § 87(2)(b) was not handcuffed when PO Maldonado arrived.

PO Maldonado responded to the scene after hearing officers call for additional assistance (Board Review 03). Upon arriving at city bus, PO Maldonado told the PO Smith and PO Rodriguez, "I'll take over from here." PO Maldonado did not think § 87(2)(b) was handcuffed at this point. PO Maldonado immediately saw PO Smith and PO Rodriguez bent down attempting to handcuff § 87(2)(b) while § 87(2)(b) was lying on his stomach. PO Maldonado did not hear PO Smith or PO Rodriguez issuing commands to § 87(2)(b). PO Maldonado did not see where § 87(2)(b)'s hands were at this point, but he recalled PO Rodriguez holding onto § 87(2)(b)'s arms. Additionally, PO Maldonado stated that he did not know where PO Smith was making physical contact with § 87(2)(b). PO Maldonado denied seeing any injuries on § 87(2)(b) or seeing him bleeding at this point. PO Maldonado did not see where PO Smith and PO Rodriguez made physical contact with § 87(2)(b) while they were on the bus.

PO Smith, PO Rodriguez, and PO Maldonado all denied seeing § 87(2)(b)'s teeth on the floor of the bus (Board Review 03, 05, and 13).

Several units responded to the incident in response to PO Rodriguez's call for additional assistance. However, several of the officers identified via the 911 Communications audio, who were interviewed at the CCRB, all stated that they did not see what occurred between the officers and § 87(2)(b) and some of the officers did not see § 87(2)(b) on the scene (Board Review 07-11).

The TRI prepared by PO Maldonado and PO Rodriguez noted a forcible takedown and that § 87(2)(b) was resisting (Board Review 30 and 31). No additional force used by officers was recorded.

The Medical Treatment of Prisoner Report noted that § 87(2)(b) received stitches in the nose and had broken teeth (Board Review 46). Additionally, it noted that § 87(2)(b) had a bruise on his right eye and scratches on his face prior to the arrest.

§ 87(2)(b) was treated at § 87(2)(b) while he was in police custody on the same day that he was arrested (Privileged Documents). In § 87(2)(b)'s medical records from § 87(2)(b), medical personnel noted that § 87(2)(b) had missing front teeth with no bleeding, a one centimeter laceration his nose with dry blood on his face, and a nasal/orbital wall fracture. Medical personnel also noted that § 87(2)(b) has poor oral hygiene with "dentition in a state of gross disrepair." § 87(2)(b) complained to medical personnel that he had an anterior bridge which had been knocked out, but there was no mentioning of when this occurred.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation (I) Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Kenny Maldonado used physical force against § 87(2)(b)

Allegation (J) Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Kenny Maldonado used physical force against § 87(2)(b)

Allegation (K) Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, officers used physical force against § 87(2)(b)

Allegation (L) Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Eric Smith used physical force against § 87(2)(b)

§ 87(2)(b) stated that PO Smith, PO Rodriguez, and other unidentified officers lifted him up off the floor of the bus and subsequently dropped him on the ground (Board Review 01). All of the officers interviewed who were identified as being on or near the city bus had conflicting testimonies of how § 87(2)(b) was removed from the bus. § 87(2)(b) also alleged that PO Smith punched his face three or four times and officers kicked him multiple times while he was lying on the ground. § 87(2)(b) stated that this was when he sustained the laceration to his nose. § 87(2)(b) denied striking, biting, or otherwise injuring any officers.

As detailed above, § 87(2)(b) provided three photos depicting his injuries which were taken a day after his arrest (Board Review 29).

In her CCRB testimony, PO Rodriguez stated that she exited the bus once PO Maldonado arrived and she did not see what occurred afterwards (Board Review 13). PO Rodriguez stated that § 87(2)(b) was not handcuffed when PO Maldonado responded.

In his CCRB testimony, PO Smith stated that he was the one who handcuffed § 87(2)(b) without any difficulties (Board Review 05). After he placed § 87(2)(b) in handcuffs, PO Smith grabbed § 87(2)(b)'s arms by the upper elbow area and lifted him up to his feet; no officer assisted him with this. PO Smith stated that he and PO Rodriguez held onto § 87(2)(b)'s arms and walked him off the bus. PO Smith stated that § 87(2)(b) was then handed off to officers who escorted him to the RMP. PO Smith recalled seeing § 87(2)(b) bite an unidentified officer in the hand once when PO Smith handed off § 87(2)(b) to the other officers. PO Smith and PO Rodriguez both denied seeing § 87(2)(b) being dropped on the ground outside of the bus and denied seeing any officers kick or punch § 87(2)(b) at any point. Moreover, PO Smith and PO Rodriguez both denied punching or kicking § 87(2)(b).

PO Maldonado stated that when he arrived at the bus, he stood at the rear door outside of the bus while § 87(2)(b) was positioned face-down on the ground in front of PO Maldonado (Board Review 03). PO Maldonado stated that § 87(2)(b)'s head was towards the rear door close to PO Maldonado, and with his legs directly behind him. PO Maldonado did not know what PO Smith or PO Rodriguez was doing at this point. PO Maldonado stated that he intended to remove § 87(2)(b) from the confined area in the bus to the ground outside so that he could search him since he did not know why § 87(2)(b) ran or what he had on him. PO Maldonado grabbed § 87(2)(b) by his waistband because he did not want to grab § 87(2)(b)'s head to remove him from the bus. PO Maldonado stated that there was no reason as to why he did not pull his arms. PO Maldonado leaned his body forward, placed his right hand on the floor of the bus, and used his left hand to grab § 87(2)(b) from the rear of his waistband to pull him out. While PO Maldonado's right hand was positioned flat on the floor of the bus, § 87(2)(b) bit PO Maldonado's right hand. PO Maldonado immediately punched § 87(2)(b)'s mouth with his right hand because § 87(2)(b) bit him and because he wanted to make § 87(2)(b) let go. PO Maldonado stated that there were no additional reasons as to why he punched § 87(2)(b)'s mouth. PO Maldonado did not see if § 87(2)(b) was handcuffed at this point. After punching § 87(2)(b) PO Maldonado attempted to get § 87(2)(b) off the bus again using the same aforementioned method. As PO Maldonado tried to pull § 87(2)(b) off the bus a second time, § 87(2)(b) subsequently bit PO Maldonado's right hand again. In response, PO Maldonado punched § 87(2)(b)'s mouth for the same reasons he mentioned before. PO Maldonado stated that there was no reason as to why he punched § 87(2)(b)'s mouth opposed to any other part of his body. After punching § 87(2)(b)'s mouth, PO Maldonado successfully pulled § 87(2)(b) out of the bus with one hand by § 87(2)(b)'s waistband. As § 87(2)(b) was pulled out of the bus, PO Maldonado went to catch § 87(2)(b) with his right hand by placing it underneath § 87(2)(b)'s body to place him on the ground. However, PO Maldonado stated that he "underestimated" § 87(2)(b)'s weight and he was unable to hold § 87(2)(b) up, which resulted in § 87(2)(b) being dropped face-first on the ground. PO Maldonado stated that § 87(2)(b) was already in handcuffs when he was removed from the bus, but he was not sure of the exact moment when he was placed in handcuffs. PO Maldonado picked § 87(2)(b).

up from the ground and he noticed that § 87(2)(b) was bleeding from his mouth, but he did not see the injury. PO Maldonado denied kicking § 87(2)(b) on the ground and he stated that he did not see PO Rodriguez do so. PO Maldonado stated that the additional officers who responded were not doing anything.

As mentioned above, the additional officers who were interviewed did not see any of the occurrences between the officers and § 87(2)(b) (Board Review 07-11). The TRI reports prepared by PO Rodriguez and PO Maldonado both indicate that PO Maldonado sustained lacerations to his hand as a result of § 87(2)(b) biting him which also contained a photo of lacerations to his hand (Board Review 30 and 31). Furthermore, the AIDED report prepared for PO Maldonado also documented the lacerations to his hand (Board Review 38). However, neither of the two officers documented that PO Maldonado punched § 87(2)(b). When asked why a hand strike was not indicated on his report, PO Maldonado stated that “thought” he had noted a hand strike on the TRI report.

The primary duty of all members of the service (MOS) is to protect human life, including the lives of individuals being placed in police custody. The reasonable amount of force may be used necessary to gain control or custody of a subject, Patrol Guide Procedure 221-01 (Board Review 28).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

Allegation (M) Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx,
Police Officer Eric Smith used physical force against § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) stated that after he was lifted up from the ground, PO Smith, PO Rodriguez, and an unidentified officer escorted him to an unmarked police sedan (Board Review 01). § 87(2)(b) denied refusing to walk toward the police vehicle. Inside the vehicle, PO Smith sat to the right of § 87(2)(b) while two other officers sat on § 87(2)(b)'s left. PO Smith punched § 87(2)(b)'s face approximately five or six times in both of his eye sockets and the bridge of his nose. § 87(2)(b) denied moving his arms, legs, or any part of his body prior to PO Smith punching. In response to the punches, § 87(2)(b) tried to avoid the punches by turning his head in the opposite direction. § 87(2)(b) denied doing anything else.

PO Smith stated that after he removed § 87(2)(b) off the bus, § 87(2)(b) was handed off to unidentified officers who escorted him to the RMP (Board Review 05). PO Smith walked away and returned to the initial scene of the vehicle stop at this point. PO Smith denied seeing any officers use any physical force against § 87(2)(b). PO Smith denied punching § 87(2)(b) and did not see any officers do so.

PO Rodriguez stated that she was somewhere on the sidewalk when § 87(2)(b) was placed inside a police vehicle, but she did not see how § 87(2)(b) got to the police vehicle (Board Review 13). PO Rodriguez stated that she returned to the initial vehicle stop with PO Maldonado when § 87(2)(b) was placed inside a police vehicle. PO Rodriguez denied seeing any officers punch § 87(2)(b) and did not see any officers do so.

PO Maldonado stated he escorted § 87(2)(b) to the police vehicle after lifting him up from the ground (Board Review 03). PO Maldonado stated that § 87(2)(b) pushed his body away from PO Maldonado as they walked towards the RMP. PO Maldonado overcame his resistance by continuing to hold onto his left arm. PO Maldonado stated that there were no additional officers assisting him. While at the RMP, § 87(2)(b) refused to sit and in response, PO Maldonado pushed § 87(2)(b) into the vehicle twice. Another uniformed officer, who PO Maldonado did not recall, went around the vehicle to pull § 87(2)(b) inside, but PO Maldonado had already successfully placed him inside without the officer's assistance. PO Maldonado did not know which officers were inside the vehicle with § 87(2)(b) or if any officers were sitting in the

back with him. PO Maldonado denied sitting in the back of the vehicle with § 87(2)(b). After he placed § 87(2)(b) in the RMP, PO Maldonado did not see PO Smith or PO Rodriguez, but he stated that they returned to the initial scene. PO Maldonado stated that he did not use any additional physical force aside from what was already mentioned.

None of the additional officers who were interviewed observed any interactions between officers and § 87(2)(b) (Board Review 07-11).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation (N) Force: On Bruckner Boulevard and Hunts Point Avenue, in the Bronx, Police Officer Kenny Maldonado used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was bleeding on the scene. § 87(2)(g) § 87(2)(b) stated that he sustained various injuries and was bleeding from the bridge of his nose and from his mouth while on the scene (Board Review 01).

Even though § 87(2)(b) did not provide any details in regards to any officers covering his face with his shirt at the scene of incident, during his CCRB testimony, PO Maldonado volunteered that he did so (Board Review 03). PO Maldonado stated that as he was walking § 87(2)(b) to the RMP, § 87(2)(b) was spitting at uniformed officers. In response, PO Maldonado pulled § 87(2)(b) towards him because he was walking in the opposite direction. Once PO Maldonado opened the back door of the RMP, § 87(2)(b) spat at PO Maldonado twice. § 87(2)(b)'s spit landed on the sleeve of PO Maldonado's sweater. While § 87(2)(b) was inside the vehicle, § 87(2)(b) spat at PO Maldonado again. In response, PO Maldonado pulled § 87(2)(b)'s shirt over his head so that he would stop spitting. PO Maldonado pulled § 87(2)(b)'s shirt by the front collar and placed it over his head, completely covering his face. PO Maldonado stated that § 87(2)(b) was spitting blood and he does not know what § 87(2)(b) has and he stated that he did not want anyone getting into contact with it. PO Maldonado stated that there were no additional reasons as to why he pulled § 87(2)(b)'s shirt over his head and PO Maldonado did not do anything else in an attempt to stop § 87(2)(b) from spitting. PO Maldonado denied pulling § 87(2)(b)'s shirt down before he left § 87(2)(b) and did not see if any officers did so. PO Maldonado did not know which officers were inside the vehicle with § 87(2)(b) or if any officers were sitting in the back with him.

PO Smith and PO Rodriguez both denied seeing any injuries on § 87(2)(b) and denied seeing him spit during the incident (Board Review 05 and 13).

The officers identified via the 911 Communications audio, who were interviewed at the CCRB, all stated that they did not see what occurred between the officers and § 87(2)(b) and some of the officers did not see § 87(2)(b) on the scene (Board Review 07-11).

When a member of the service must gain compliance, control, or custody of an uncooperative subject, the member should comply with P.G. 221-02, "Force Guidelines" and: "...15) Position the subject to promote free breathing, as soon as safety permits, by sitting the person up or turning the person onto his/her side, 16) Observe the subject closely for injuries, signs of serious illness or difficulty breathing" (Board Review 27).

§ 87(2)(g)
[REDACTED]

Allegation (O) Abuse of Authority: On Southern Avenue and Barretto Street, Police Officer Gabrielle Rodriguez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(g)
[REDACTED]

§ 87(2)(b) did not provide a statement regarding officers entering § 87(2)(b)'s vehicle or confirm or deny if there were knives in the vehicle (Board Review 01).

§ 87(2)(b) and § 87(2)(b) did not provide a statement to the CCRB (Board Review 39).

As detailed above, Sgt. Fana, PO Smith, and PO Rodriguez all observed two knives inside § 87(2)(b)'s vehicle (Board Review 05, 06, and 13). PO Rodriguez also stated that she smelled an odor of un-burnt marijuana when she was by the vehicle (Board Review 13). PO Rodriguez acknowledged that after § 87(2)(b) was placed under arrest, she returned to the vehicle stop and retrieved the two knives from the vehicle.

The arrest reports for § 87(2)(b) and § 87(2)(b) all noted that PO Rodriguez observed two switchblade knives in the vehicle (Board Review 32-34). The property vouchers also indicated that two switchblade knives, marijuana, and a substance alleged to be crack cocaine were recovered (Board Review 35).

As stated in more detail above, PO Rodriguez and PO Smith's criminal court testimony and their CCRB testimony were generally consistent and § 87(2)(b) denied there being two knives in the vehicle (Board Review 40). Furthermore, PO Smith denied smelling marijuana during the incident.

The odor of marijuana emanating from a vehicle establishes probable cause to search the vehicle and its occupants, People v. Smith 66 A.D.3d 514 (2009) (Board Review 25).

An officer's observation of an illegal weapon in plain view within a vehicle provides that officer with probable cause to search the vehicle, a principle commonly referred to as the "plain view doctrine," People v. Griffin 212 A.D.2d 967 (1995) (Board Review 23).

§ 87(2)(g)

Allegation (P) Force: At the 41st Precinct stationhouse, officers used physical force against

§ 87(2)(b)

Allegation (Q) Force: At the 41st Precinct stationhouse, officers restricted § 87(2)(b)'s breathing.

In his CCRB statement, § 87(2)(b) stated that when he requested to sit down while he was brought in front of the desk, unidentified officers pushed him down to the floor so that he was positioned on his rear (Board Review 01). While he was on the ground, officers pulled his hood of his sweater over his head and covered his entire face up to his chin. § 87(2)(b) told the officers that he could not breathe approximately two or three times and that his breathing was restricted for approximately 20 seconds, but the officers covered his face for approximately a minute.

Sgt. Fana and PO Smith denied pushing § 87(2)(b) to the floor and PO Rodriguez denied making any physical contact with § 87(2)(b) inside the stationhouse (Board Review 05 and 06). Sgt. Fana, PO Smith, PO Rodriguez, and PO Maldonado denied seeing any other officers push § 87(2)(b) (Board Review 03, 05, 06, and 13). PO Maldonado denied seeing § 87(2)(b) on the floor inside the stationhouse. PO Rodriguez, PO Smith, PO Maldonado, and Sgt. Fana denied covering § 87(2)(b)'s face with the hood of his sweater and did not see any officers doing so. PO Smith and PO Maldonado also denied hearing § 87(2)(b) complain that his breathing was restricted.

Sgt. Marzan who was the desk officer on duty at the time did not have an independent recollection of this incident and did not recognize § 87(2)(b) (Board Review 12).

The photos provided by § 87(2)(b) shows blood stains on the hood of his clothing (Board Review 29).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
- § 87(2)(b)
[REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) has been a party.
- Sgt. Fana has been a member of service for 10 years and has been a subject in 20 CCRB complaints and 47 CCRB allegations, of which three were substantiated:
 - Case number 200906896 involved a substantiated allegation of a stop against Sgt. Fana. The Board recommended Charges and the NYPD concurred imposed Instructions.
 - Case number 201703752 involved a substantiated allegation of physical force against Sgt. Fana. The Board recommended Command Discipline A and the NYPD has not yet imposed discipline.
 - Case number 201707824 involved a substantiated allegation of discourtesy against Sgt. Fana. The Board recommended Command Level Instructions and the NYPD has not yet imposed discipline.
 - § 87(2)(g)
[REDACTED]
- PO Smith has been a member of service for eight years and has been a subject in five CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g)
[REDACTED]
- PO Rodriguez has been a member of service for four years and has been a subject in five CCRB complaints and 18 allegations, none of which were substantiated. § 87(2)(g)
[REDACTED]
- PO Maldonado has been a member of the service for 11 years and has had been a subject in one CCRB complaint and three allegations, none of which were substantiated. § 87(2)(g)
[REDACTED]
[REDACTED]

Mediation, Civil and Criminal Histories

- This complaint was no suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming psychological and physical distress, physical injuries, pain and suffering, damage to property, fear and trauma, deprivation of liberty, and economic loss and seeking an unspecified dollar amount as redress. An email was sent to the New York City Comptroller's Office to determine whether or not a 50H Hearing has been held. To date, the results are still pending.

- [REDACTED]
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) [REDACTED]
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs) [REDACTED]

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date